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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Report of the Joint Committee on the Bill to provide for better organisation and development of school education in the Union territory of Delhi and for matters connected therewith or incidental thereto was presented to Lok Sabha on the 18th December, 1972:—

COMPOSITION OF THE COMMITTEE

Shri H. K. L. Bhagat—*Chairman*

MEMBERS

Lok Sabha

2. Shri Virendra Agarwala
3. Shri Frank Anthony
4. Shrimati Mukul Banerji
5. Shri Jagdish Bhattacharya
6. Shri C. K. Chandrappan
7. Shri Amarsinh Chaudhari
8. Chaudhry Dalip Singh
9. Shri R. R. Singh Deo
10. Shri Jagdish Chandra Dixit
11. Shri Samar Guha
12. Shrimati Subhadra Joshi
13. Shri Kamala Prasad
14. Shri E. R. Krishnan
15. Shri Jagdish Narain Mandal
16. Shri Sudhakar Pandey
17. Shri E. V. Vikhe Patil

18. Shri Krishnarao Patil
19. Shri Prabodh Chandra
20. Shrimati Maya Ray
21. Shri P. V. Reddy
22. Dr. Govind Das Richhariya
23. Shri K. K. Shetty
24. Shri Satyendra Narain Sinha
25. Shri T. Sohan Lal
26. Shri Chandra Bhal Mani Tewari
27. Shri R. G. Tiwari
28. Shri P. Venkatasubbaiah
29. Shri Amarnath Vidyalankar
30. Shri D. P. Yadav

Rajya Sabha

31. Shrimati Savita Behan
32. Shri Suhrid Mullick Choudhury
33. Shri Jairamdas Daulatram
34. Dr. V. P. Dutt
35. Shri N. G. Goray
36. Shri Bhupesh Gupta
37. Prof. S. Nurul Hasan
38. Shri Yashpal Kapur
39. Shri N. H. Kumbhare
40. Dr. Bhai Mahavir
41. Shri Nawal Kishore
42. Shri D. Y. Pawar
43. Shri Janardhana Reddy
44. Dr. Triguna Sen
45. Dr. V. B. Singh

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel, Ministry of Law and Justice.*

2. Shrimati Rama Devi—*Deputy Legislative Counsel, Ministry of Law and Justice.*

REPRESENTATIVES OF THE MINISTRY OF EDUCATION AND SOCIAL WELFARE

1. Shri I. D. N. Sahi—*Secretary.*
2. Dr. S. M. S. Chari—*Joint Educational Adviser.*
3. Shrimati Shardo Rao—*Deputy Educational Adviser.*
4. Shri Girdhari Lal—*Under Secretary.*
5. Shri D. S. Misra—*Director of Education, Delhi Administration.*
6. Shri J. N. Dayal—*Deputy Director, Directorate of Education, Delhi Administration.*

7. Shri R. P. Singhal—*Secretary, Central Board of Secondary Education, New Delhi.*

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

Shri H. G. Paranjpe—*Deputy Secretary.*

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* to provide for better organisation and development of school education in the Union territory of Delhi and for matters connected therewith or incidental thereto, was referred, having been authorised to submit the report on their behalf, present their Report with the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 2nd September, 1972. The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Professor S. Nurul Hasan, Minister of Education, Social Welfare and Culture on the 2nd September, 1972 and was adopted.

3. Rajya Sabha concurred in the said motion on the 4th September, 1972.

4. The message from Rajya Sabha was published in Lok Sabha Bulletin—Part II on the 4th September, 1972.

5. The Committee held 15 sittings in all.

6. The first sitting of the Committee was held on the 12th September, 1972 to draw up their programme of work. The Committee decided that various educational institutions, organisations, associations, public bodies and individuals, etc. interested in the subject matter of the Bill and desirous of submittting memoranda thereon for the consideration of the Committee might do so by the 30th September, 1972. The Chairman was authorised to decide, after examining the memoranda received from various organisations, associations, etc. as to which of them should be called upon to give oral evidence before the Committee.

7. 37 memoranda on the Bill were received by the Committee from various educational institutions, organisations, etc.

8. At their second sitting held on the 13th October, 1972, the Committee held a general discussion on the implications of the various provisions of the Bill and also heard the views of the Minister of Education, Social Welfare and Culture thereon. At their third, fourth, fifth, sixth, seventh and eighth sittings held on the 19th and 20th October, 9th, 10th, 15th and 16th November, 1972 respectively, the Committee heard the evidence given by various educational institutions, organisations, etc.

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 2nd September, 1972.

9. The Report of the Committee was to be presented by the 13th November, 1972. The Committee were granted extension of time twice, the first on the 13th November, 1972 up to the 15th December, 1972 and subsequently on the 14th December, 1972 up to the 18th December, 1972.

10. At their fourteenth sitting held on the 8th December, 1972, the Committee decided that (i) the evidence given before them might be laid on the Tables of both the Houses; and (ii) two copies each of the memoranda received by the Committee from various educational institutions, organisations, etc. might be placed in the Parliament Library, after the Report of the Committee was presented.

11. The Committee considered the Bill clause-by-clause at their sittings held on the 30th November, 1st, 2nd, 6th and 8th December, 1972.

12. The Committee considered and adopted the Report on the 13th December, 1972.

13. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

14. *Clause* 2.—The Committee have made amendments to the definitions of certain terms and also added three new definitions namely, of "manager", "managing Committee" and "unaided minority school".

(i) *Sub-clause* (*e*) (*i*).—The Bill provides that in the case of a school recognised by the Central Government, that Government would be the appropriate authority. The Committee feel that since the Central Government itself does not recognise any school at present, and such recognition is accorded by a body sponsored by it, namely, the Central Board of Secondary Education or in the case of schools wholly financed out of Central Government funds, by the Kendriya Vidyalaya Sangathan, also sponsored by the Central Government, it would be more appropriate to spell it out accordingly. The Committee also feel that the appropriate authority will have functions not only in relation to existing schools but it will also have functions in relation to schools which might seek recognition in future. The sub-clause has, therefore, been substituted.

(ii) *Sub-clause* (*e*) (*iv*) & (*v*).—The Committee note that at present neither the New Delhi Municipal Committee nor the Delhi Cantonment Board are the recognising authorities for any school. In view of this and the fact that there are already a number of authorities for recognising the various schools, the Committee feel that it would not be desirable to create multiplicity of authorities for the purpose. These parts of the sub-clause have, therefore, been omitted.

(iii) *Sub-clause* (*e*) (*vi*).—The Committee feel that there may be schools which are not covered by the existing provisions enumerated in sub-clause (e). In such cases, the Administrator or any other officer authorised by him should be the appropriate authority. A new sub-clause has been added accordingly.

(iv) *Sub-clause* (*h*).—The amendment made in this sub-clause is of a drafting nature.

(*v*) *Sub-clause* (*i*).—The Committee feel that with a view to ensuring that no injustice is done to the employees who had rendered at least one year's service in the school immediately before the introduction of the

Bill, they should also be brought within the ambit of the definition of the term "existing employee". The sub-clause has been amended accordingly.

(vi) *Sub-clause* (*m*).—The Committee note that the terms "manager" and "managing committee" although appear in some clauses of the Bill, have not been defined. The definitions of the terms "manager" and "managing committee" have accordingly been incorporated in the Bill.

(vii) *Sub-clause* (*q*) .—The Committee were informed that in accordance with the latest thinking, any examination held lower than the high school stage would not be considered as a "public examination". The sub-clause has been amended accordingly.

(viii) *Sub-clause* (*x*)—Since the expression "unaided minority school" has been inserted at several places in the Bill, a definition of "unaided minority school" has been added at the end of this clause.

15. *Clause* 3 (*i*) *Sub-clause* (1).—The Committee feel that the expression "education" should be used in its widest amplitude and should be restricted to the categories mentioned in the sub-clause. The sub-clause has been amended accordingly.

Sub-clause (2)—The Committee feel that the Administrator should not have an unguided power to regulate school education in Delhi; he should regulate school education in accordance with the provisions of the Act and the rules made thereunder. The sub-clause has been amended accordingly.

(iii) *Sub-clause* (3)—The amendments made in this sub-clause are of a drafting nature.

16. *Clause* 4.—The Committee have made certain amendments to this clause as explained below:—

(i) *Sub-clause* (1)—The Committee feel that in order to avoid any financial hardships being faced by the employees of a school, it should be ensured that the school has adequate funds to pay to its employees salary and allowances regularly and the recognition of the school should be made subject to this condition also. Part (a) of the first proviso to this sub-clause has been amended accordingly.

The Committee feel that the inclusion of a condition precedent to the recognition of a school to the effect that the school premises or a part thereof shall not be used for purposes unconnected with the activities of the school in the Act itself would not be desirable. The Committee feel that such matters should better be left to be looked into and decided by the appropriate authorities concerned in accordance with the rules to be made in this regard. The second proviso to this sub-clause has, therefore, been omitted.

(ii) *Sub-clause* (2).—The Committee feel that provision of six months' period for taking a decision by the appropriate authority on the application for recognition of a school is too long and is likely to cause hardships to the applicants. The Committee feel that a period of four months for arriving at a decision in this behalf would be quite reasonable. The sub-clause has been amended accordingly.

(iii) *Sub-clause* (3).—The provisions contained in the proviso to this sub-clause provide that the aggrieved person may be allowed to prefer an appeal after the expiry of thirty days from the date of communication of the refusal of recognition to a school in case the prescribed authority is satisfied that he was prevented by sufficient cause from preferring the appeal within the said period. The Committee feel that in such cases some definite time-limit for preferring an appeal should be laid down. They also feel that a period of sixty days for preferring an appeal under certain circumstances after the expiry of thirty days already allowed would be quite reasonable. The proviso of this sub-clause has been amended to achieve these objectives.

(iv) *Sub-clause* (6).—The amendment made in this sub-clause is of a drafting nature.

17. *Clause* 5.—(i) *Sub-clause* (1).—The amendment made in this sub-clause is of a drafting nature.

(ii) The proviso to this sub-clause provides that the managing committee of every recognised school shall make, with the previous approval of the appropriate authority, a scheme of management. The Committee feel that in order to safeguard the rights guaranteed to the minority-run schools under Article 30(1) of the Constitution of India, the managing committees of such unaided minority-run schools should be exempted from seeking the approval of the appropriate authority for introducing the scheme of management in their schools. A new proviso has, therefore, been added to this sub-clause accordingly.

The Committee recommended that the proposed scheme of management should provide for adequate representation of teachers in the managing committee of a recognised school. The Government, while framing rules for the introduction of the scheme of management under the Act, might make necessary provisions to that effect.

18. *Clause* 8.—(i) The amendment made in the first proviso of sub-clause (1) of this clause is of a drafting nature.

(ii) *Sub-clause* (3).—The Committee feel that the time-limit of thirty days for preferring an appeal by an employee to the tribunal against the order of dismissal, removal or reduction in rank from the date of commuication to him of such order is too inadequate. The Committee feel that the time-limit for such purposes ought to be enhanced to three months. The sub-clause has been amended accordingly.

(iii) *Sub-clause* (4).—The Committee are of the opinion that in order to maintain strict discipline in the school, the managing committee of a school should have the powers to suspend a teacher with immediate effect on grounds of such gross indiscipline as may be specified in the Code of Conduct. Further, in order to ensure that the case of suspension is decided with the least possible delay, the managing committee should communicate the suspension to the Director and the suspension should not remain in force beyond a period of fifteen days unless sooner approved by the Director. A new proviso to this sub-clause has, therefore, been added accordingly.

(iv) *Sub-clause* (5).—In view of the proviso which has been added to sub-clause (4), the proviso to this sub-clause has been omitted.

19. *Clause* 10.—(i) The Committee feel that the appropriate authority should also be empowered to direct the management of a recognised private school to bring the scales of pay and allowances and other prescribed benefits of the employees of such school upto the level of the employees of the corresponding status in the schools run by such authority. Further, any failure to comply with such direction should be deemed to be non-compliance with a condition for the continuance of the recognition of the school. Two new provisos to sub-clause (1) of this clause have been added accordingly.

(ii) *Sub-clause* (2).—The Committee feel that in order to avoid any financial hardships being caused to the employees on account of non-payment of their salaries, etc. in time, it should be the responsibility of the Administrator to get the salaries and allowances to the employees disbursed within the first week of every month. The sub-clause has been amended accordingly.

20. *Clause* 11.—The Committee feel that hardship may be caused to an employee unless the tribunal is vested with the powers to stay the operation of the order appealed against. Sub-clause (6) of this clause has been amended accordingly.

The Committee also feel that the fees for preferring an appeal should not exceed one rupee. The Committee feel that this matter should be left to be provided by rules.

21. *New clause* 12.—The Committee feel that while the regulatory provisions of Chapter IV should apply to minority schools which receive aid from the Government, the said provisions should not apply to minority schools which do not receive any such aid. A new clause exempting unaided minority schools from the regulatory provisions of this Chapter has, therefore, been added.

22. *New clauses* 13, 14 *and* 15.—The Committee feel that although the regulatory provisions of Chapter IV should not apply to unaided minority schools, some regulatory provisions with regard to such schools are necessary with a view to ensuring that appropriate standards of school education are maintained in Delhi. The Committee have, therefore, empowered the Government to make rules specifying the minimum qualifications for, and method of, recruitment of teachers of such schools and the code of conduct of such teachers. The Committee, however, feel that while the State should not interfere with the rights of management with regard to such schools, it should be ensured that the managing committee of such schools regulate the relationship between itself and its employees in accordance with the terms of a written contract. While the managing committee and the employee would be free to settle the terms of the contract by and between themselves, once the contract is entered into, the relationship between the managing committee and the employee would be governed by the terms of such contract. This arrangement will, on the one hand, maintain the independence of the managing committee, it will, on the other hand, ensure certain protections to the employee so that the employee may not have to remain at the mercy of the managing committee. A new Chapter for achieving these objectives has, therefore, been added to the Bill.

23. *Clause* 13 (*New clause* 17).—The Committee are of the opinion that the managers of all schools (whether aided or unaided) should be required to file a full statement of fees to be levied with the Director of Education before the commencement of each academic session. It should also be made binding on them that the fees in excess of those mentioned in the statement shall not be charged during the academic session without the prior approval of the Director. Accordingly, a new sub-clause has been added to this clause.

24. *Clause* 14 (*New clause* 18).—The Committee are of the opinion that, as in the case of aided schools, every recognised unaided school should maintain a fund to be called "Recognised Unaided School Fund" crediting thereto fees, charges and payments which may be realised for other specific purposes and any other contributions, endowments, gifts etc. received by the school. It should also be made obligatory on the part of the schools to utilize (i) the income by way of fees only for the prescribed educational purposes and (ii) other charges realised or payments received only for the specific purposes for which they were realised or received. Two new sub-clauses (3) and (4) have accordingly been added to this clause.

25. *Clause* 15 (*New clause* 19).—The Committee feel that the persons who present students at a public examination without complying with the provision of this clause should be punished. Suitable penal provisions have been made in new clause 27.

26. *Clause* 16 (*New clause* 20).—The Committee feel that the period of three years prescribed for taking over of a defaulting school by the Administrator is too short and, in some cases, a longer period may be necessary. It should, therefore, be increased to five years. The Administrator should however, be required to review the position on expiry of an academic year and should, if he so considers it necessary, issue directions for the continuance of such management for a maximum period of one year at a time. But such take over shall not continue, in any case, for a period exceeding five years. Proviso to sub-clause (1) of this clause has been amended accordingly.

The amendments made in the heading of Chapter VI and the marginal heading of this clause are of a minor nature.

27. *Clause* 18 (*New clause* 22).—The Committee feel that the constitution of the Delhi School Education Advisory Board should not be left to the unfettered discretion of the Administrator and that broad guidelines for the constitution of the Advisory Board should be laid own in the Act itself. The Committee feel that the Advisory Board should include, *inter alia*, heads of schools, representatives of teachers' organisations, parents/guardians, managers and eminent educationists. Sub-clause (2) of this clause has, therefore, been amended accordingly.

28 *New Clause* 27.—The Committee feel that if the manager of any recognised private school fails to carry out any orders made by the Tribunal or presents any student for any public examination in contravention of provisions of clause 15 (new clause 19) or fails to deliver any school property to the Administrator in accordance with the provisions of clause 16 (new clause 20), he should be made liable to severe punishment. A new clause has, therefore, been added to the Bill accordingly.

29. *Clause* 23 (*New clause* 28).—The Committee feel that the Administrator may also be vested with powers to frame rules for matters relating to accounting and operating of school fund and all other funds, financial and other returns to be filed by every school, manner of inspection of the recognised school and the Code of Conduct for the teachers and other employees. Some new items to sub-clause (2) have, therefore been added accordingly. The other amendments made in this clause are of a consequential nature.

30. The Joint Committee recommended that the Bill, as amended, be passed.

H. K. L. BHAGAT,

Chairman,
Joint Committee.

NEW DELHI;
December 18, 1972.
Agrahayana 27, 1894 (*Saka*).

MINUTES OF DISSENT

I

The objectives underlying the Delhi School Education Bill, 1972 are undoubtedly laudable and the Joint Committee has done a good job in improving the Bill in several respects. But we are afraid, we could not pursuade ourselves to agree to certain provisions incorporated in the Bill which would certainly defeat the purpose of school education. The quality of education needs to be improved but the elements of regimentation should not be allowed to be introduced in the sphere of school education. At the Wardha Education Conference held recently, Acharya Vinoba Bhave had strongly pleaded for free and compulsory education at primary level. The consensus at this Conference was that the Government's interference in the functioning of schools should be as minimum as possible and the Government leaders particularly the Prime Minister have also been pleading for free education. But the Government has sought such sweeping powers for controlling even unaided recognised schools that there is a fear that an atmosphere of freedom would be curtailed to the extent that it may not help in enriching he personality of our children. It is equally true that the Government aided schools must be improved and the Government here can play a vital role in making these Government-aided schools really ideal institutions. If the Government succeeds in respect of Government aided schools, it is almost certain that the unaided schools will follow their example.

It is true that there are certain malpractices which are being indulged in Delhi Schools. But they can certainly be checked if the Government makes it obligatory on the part of the schools to follow certain code of conduct in respect of service conditions for the teachers and also for the tuition fee and other charges received from the students. The maximum and minimum should also be laid down in respect of the tuition fee so that public schools remain open for the children of the poorer classes as well.

The Bill should better be entitled as "Delhi School Teachers' Bill" because this Bill is silent either in respect of improving the quality of education or to provide better facilities to the children of Delhi schools. It has not touched any other aspect of school education except that of improving the service conditions of school teachers. Therefore, the purview of the Bill need be further broadened, as to include all other aspects of school education. A comprehensive school education policy needs to be evolved which can place our schools on such foundations as to build a classless society.

NEW DELHI;
December 15, 1972.

SATYENDRA NARAYAN SINHA
VIRENDRA AGARWALA

II

The objectives underlying the Delhi School Education Bill, 1972 are undoubtedly laundable and the Joint Committee has done a good job in improving the Bill in several respects by introducing some welcome changes. But I am afraid, I cannot persuade myself to agree to certain provisions incorporated in the Bill which would certainly not serve the best interests of school education. The quality and standards of education need to be improved but the elements of regimentation should not be allowed to be introduced in the sphere of school education. At the Wardha Education Conference held recently, Acharya Vinoba Bhave had strongly pleaded for free and compulsory education at primary level. The consensus at this Conference was that the Government's interference in the functioning of schools should be as minimum as possible and the Governmet leaders particularly the Prime Minister have also been pleading for free and unregimented education. But the Government has sought such sweeping powers for controlling even unaided recognised schools that there is a fear that the atmosphere of freedom would be curtailed to the extent that it may not help in enriching the personality of our children. It is equally true that the Government-aided schools must also be improved and the Government here can play a vital role in making these Government-aided schools really ideal model institutions. If the Government succeeds in respect of Government-aided schools, it is almost certain that the unaided schools will follow their example.

It is true that there are certain malpractices which are being indulged in Delhi schools. But they can certainly be checked if the Government makes it obligatory on the part of the schools to follow certain code of conduct in respect of service conditions for the teachers and also for the tuition fee and other charges received from the students. The maximum and minimum may also be laid own in respect of the tuition fee of the public schools so that the children of the poorer classes as well may be able to benefit from them.

The Bill should better be entitled as "Delhi School Teachers' Bill", because this Bill is silent both in respect of improving the quality of education and in providing better facilities to, and enforcing greater discipline among the children of Delhi schools. It has by and large not touched other basic aspects of school education, except that of improving the grades and service conditions of school teachers. Therefore, the purview of the Bill needs to be further broadened so as to include all other aspects of school education. A comprehensive school education policy needs to be evolved which can place our schools on such solid foundations as to help the coming generations to build a better, egalitarian and classless society.

NEW DELHI; NAWAL KISHORE.
December 15, 1972.

III

It is indeed a sad commentary on the education policy of the Central Government that it took more than twenty-five years for it to formulate a Bill even of this kind on the school education in the Capital and present it before the Parliament.

However, this Bill will improve the conditions now prevailing and for this the credit should mainly go to the teachers and other employees of the schools in Delhi who have fought consistently for the democratisation of education.

2. This Bill provides for various categories of schools to function in Delhi. Certain categories of schools will have their own standards in giving admission to students, in appointing teachers and other employees, in administering the schools and in so many other things relating to the running of these institutions. It is anomalous and it will create problems in future. This Bill should have eliminated these categories and made way for providing uniformity in all aspects of school education in Delhi.

3. We believe that the entire system of our education including the school education should thoroughly be changed in its structure, ideology, content and objective, to make it an effective instrument of social transformation, to enable it to suit the needs of our times and to make it possible to shape generations of youth in tune with the noble objectives to which the nation stands committed today. We are not going to deal with those larger questions here.

4. The so-called public schools will continue to remain in Delhi even after this Bill is adopted.

It is a well-known fact that these so-called public schools are run like little zamindaries. They are the standing monuments of our colonial past, and they produce students who ape everything western and look down upon our national heritage and people. These institutions are notorious in producing a new class of boys and girls who are snobs.

It has been pointed out by the teachers that these institutions are run as rackets, and the racket remains to be a racket even if it has all the so-called status symbols, blessings and backing of the affluent sections of the society. These institutions are notorious for victimising their teachers and non-teaching staff and also for denying them all their rights and security of service.

One of the most repulsive features of the so called public schools is that the minds of the students are moulded with a bias with a certain retrograde western ideas and values. In fact there is a strong tendency among these students in aping the west. Needless to say that this is a hangover of the colonial past which had yet to be buried down in these institutions.

The forward, radical or even advanced ideas find little encouragement in these types of schools. Yet in most of these and in some other types of schools, obscurantist and communal ideas are freely inculated in the young minds.

By allowing this category of schools to function in Delhi, the government became a party in creating two worlds in the education, the world of the "haves" and that of the "have-nots".

This is one of the most demoralising aspects which will have its harmful social consequences in future.

It is often argued that the quality of education in this type of schools is good. What however is unsaid is that these type of schools are charging exorbitantly high fees and tuition fees and therefore are in a position to provide better academic facilities. Moreover the students of these types of schools come from social strata in which they can pursue their studies with all comforts and advantages that money and privilege offer, for a decent creature existence. They are often haunted by poverty and want and many do not even have the minimum wherewithals to meet the bare minimum educational requirements; whereas they do not have money even to buy books, the boys and girls who go to the so called public schools are getting expensive luxury of private tuition and special coaching.

It has also been pointed out during the course of evidence that government schools and aided schools having necessary facilities produce equally good results.

It is our opinion that the Bill should have provided for the abolition of the so-called private schools.

5. We are of the view that in the present situation the rights of minority in the matter of education should be fully safeguarded.

But we should not allow this right to be made a pretext to deny or restrict the rights and security of service of the teachers and other employee of the schools run by the minorities. In fact the cause of the minorities will be a hundred times better served, if teachers and other employees of their institutions are treated with dignity and assured their full rights and better security of service.

The fate of minorities is not surely depending upon a few individuals at the top. It primarily is depending on the high democratic consciousness of the people of this country. We feel that the time has come for seriously pondering over this issue in the light of experience so that we can further strengthen and protect the democratic rights of the minorities.

6. We wanted that the clauses of the Bill regaring the scheme of management, Delhi Schools Education Advisory Board etc. should be reformulated with a view to spell out in the Bill itself the broad outline of the composition, and functioning of these bodies.

But it has been accepted with the plea that it would all be written in details in the Rules.

Much therefore has been now left to the Rules which are going to be framed. The future of the Act would indeed largely be determined by the Rules and we know how, some times, rules are framed to defeat the very purpose of a good legislation. Bureaucrat will have a big say in this matter who have not come out well in the course of the evidence of the Joint Committee. There have been strong criticisms and complaints against them. Obviously the success of the present legislation will largely depend on how the inhibiting bureaucratic red-tape and influence are eliminated. There should be dynamic cooperation between the officials of the administration in the Ministry and other authorities and those who run the schools. Here, in our view the Education Ministry is called upon to play an important role.

7. We would have liked the Bill to be far more advanced and democratically oriented than it is. But this was not possible, largely because, the government is yet to make up its mind on many questions of policies and principles.

8. The Hon. Minister of Education, Prof. Nurul Hasan has made positive responses on many issues. But we only wish that he had gone further in that direction. We also record our appreciation of the rest of our colleagues in the Joint Committee; but for whose interest, understanding of the problem and sympathy for the teachers and other employees, even the improvement the Joint Committee has made would not have been possible.

During the work of this Committee there have been clashes and controversies. But so far as we are concerned, we expressed our views in good faith and it was not our intention to hurt any. If any of our observations has caused hurt to any of our colleagues, holding contrary views, then, we will hope them to understand that we were on an assignment of duty which permitted no pulling of the punch, when principles of the rights of teachers and other employees are involved. But we quarrelled only with ideas, not with individuals.

NEW DELHI;
December 16, 1972.

BHUPESH GUPTA
C. K. CHANDRAPPAN

IV

A Lawless Bill

It is much more in sorrow than in anger that I append this minute of dissent.

Worsening Position of Minorities

2. Only the minorities realise that because of increasing intolerance how their position has steadily worsened during the past few years. The gap between promise and performance by the Government continues to grow. During the recent discussion in the Lok Sabha on the Linguistic Minorities Commissioner's 12th Report, I was constrained to point out that in spite of repeated professions of secularism how little Government was concerned especially with the smaller minorities because they have no voting strength.

As pointed out by the Linguistic Minorities Commissioner in the 12th Report, under Article 350B of the Constitution, none of the reports from 1965 to the 11th Report, have been discussed by Parliament.

3. I had fought bitterly for the inclusion of Article 350B in the Constitution in the Joint Committees on the States Reorganisation Bill and the Constitution (Ninth Amendment) Bill: my proposal for such a provision was rejected by the Chairman, the late Govind Ballabh Pant. It was only after I had met Jawaharlal Nehru and led a deputation of M.Ps. that it was agreed, later, to put in the present Article 350B. Even then my request for putting teeth into this provision, so that directives could be issued to the States by the Centre, was rejected by Govind

Ballabh Pant: he, however, observed that the Centre could issue directives under Article 355 of the Constitution.

The Linguistic Minorities Commissioners' reports have pointed out how the minorities were being treated as inferior citizens and the commissioner was utterly helpless in the matter. It has been pointed out that State Governments deliberately discriminate against linguistic minority groups without any course from the Central Government. In 1956 the Government placed memorandum on the table of both Houses of Parliament. It had been agreed to by the States: it provided, *inter alia*, that for entry into the State Services there would be no insistence on passing a test in the regional or State language: but this memorandum has been brazenly ignored by certain States: the Centre looks on as a silent, apparently helpless spectator.

4. I speak from increasingly bitter experience. The Anglo-Indians, whom I have had the privilege to lead for the past 30 years, are, today, just not considered for State service. Another unhappy feature is that because of the growing 'Sons of the Soil' movements, which in many ways the Central Government has encouraged, the minorities are deliberately excluded from State service. The sons and daughters of Anglo-Indians, in the Central service, who are liable to transfer from one State to another are just not considered: the excuse is that the parent has not been continuously residing in the State for 15 years, although it has, in fact, been his home for generations. The sons and daughters are not considered eligible for admission to colleges.

The Employment Exchanges, throughout the country, are riddled with communalism against the minorities and also with corruption. I have had complaints from Anglo-Indian MLAs that when the Anglo-Indians go for jobs from a different town or city in the same State they are refused registration: they are told to go back to the town or city from where they had come. Even persons resident in a particular city are refused registration. Anglo-Indian MLAs generally have complained that corruption is rampant in Employment Exchanges throughout the country.

As I mentioned in my speech on the Linguistic Minorities Commissioner's Report the smaller minorities are not even inferior citizens: they are not citizens at all, except for paying taxes. Today, the smaller minorities have been rendered Stateless for purposes of State service.

5. It was because of the recognition by the framers of the Constitution, among whom I had the privilege to be counted, that the minorities faced increasingly difficult and sometimes grim situation, culturally and educationally, that they had carved out certain fundamental rights for the minorities, especially Articles 26, 29 and 30. Article 30 gives the right to the minorities, based on language or religion, to establish and administer educational institutions of their choice.

6. The States Reorganisation Commission recorded the fact that they had received widespread complaints from the minorities of cultural oppression and economic exploitation. The Commission recommended that because of this the Centre should take powers to ensure the adequate protection of the minorities. But the Centre declined to do so. At my instance, all that was reluctantly done was to put into the

Constitution Article 350, which has proved to be toothless, mocking illusion.

7. During the past 30 years I have had to fight repeated battles not only politically but in the Supreme Court against attempts, especially by communist or Communist dominated Governments, to garrotte and expropriate minority educational institutions. This attitude of the communists and crypto-communists is understandable, because an avowed purpose of communist ideology is regimentation of education so as to indoctrinate and brainwash the child. In the communist or totalitarian dispensations the child is the creature of the State. In a real democracy a vital, basic concept is that the child is not the creature of the State: the parent has the right and, indeed, the duty to prepare his child to meet his obligations in life.

8. Hindu politicians, because they are in a permanent and overwhelming majority everywhere, sometimes tend to forget that even Hindus, having a distinct language, are linguistic minorities almost everywhere and do face the cultural oppression and economic discrimination meted out to other permanent minorities. Recently, I had appeared in the Supreme Court, on behalf of one of the Arya Samaj Colleges officially known as the D.A.V. Colleges (1971 SC 1737). They complained that as Arya Samajists, a minority in the Punjab, they faced educational discrimination and oppression. The Supreme Court vindicated their rights under Article 30 of the Constitution and struck down the attempts in the Guru Nanak University statutes to take away their choice of administration in the matter of appointment of staff and the constitution of their managing bodies. In Delhi there are many Hindu linguistic minority groups such as the Tamils, the Telugus, the Bengalis etc: they are also entitled to the protection of Article 30 of the Constitution.

9. The evil, man-made tragedy in Assam is fresh in our memory. In the name of language even groups subscribing to same religion are subjected to loot, arson, murder and rape. Before the Bengalis it was the Biharis.

The present demand by the Telengana area underlines that even large groups numbering millions having the same language, subscribing to the same religion, cannot expect equality of treatment. The periodic eruptions against the Muslims and Scheduled Castes have, tragically, become a way of Indian life.

In this context the position of the smaller minorities can better be imagined than described. As I said in my speech in the Lok Sabha the condition of the smaller minorities cannot even be imagined because the imagination boggles as to what is happening to them, today, both culturally and economically.

10. In this atmosphere of increasing intolerance and discrimination against the minorities, the only safeguards left, especially for the smaller, permanent minorities are the fundamental rights. So far, thank God, the Supreme Court has vindicated the rights of the minorities, especially under Article 30.

11. How the gap between promise and performance is steadily widening is underlined by this Bill. The cynical garishness of this gap is accentuated by the fact that, for the first time in its history, the Ruling

Congress Party had spelt out in its manifesto the intention to honour, scrupulously, the rights of the minorities to establish and administer educational institutions of their choice under Article 30. Yet, at this first opportunity in this Bill, piloted by a Minister of the Central Government, a fraud has been sought to be perpetrated on the minorities. That the Centre has been toying with such a fraud was indicated in the statement of the present Minister for Law and Justice on the 2nd February, 1972, at Trivandrum: he was reported to have stated that the Central Government was considering amending Article 30 as the minority institutions were acting as a brake on the educational progress of the country. I immediately issued a statement nailing the Minister's remarks to the counter as a sweeping, vicious calumny. I pointed out that in every fraternity there were black sheep, but that, by and large, the minority-run schools and colleges were cases of discipline and progress in a widening desert of falling, disparate standards, and, especially as compared with the rampant indiscipline, intrigue, nepotism, casteism and corruption in Government and quasi-Government Educational institutions.

It is common knowledge that Presidents of India, Prime Ministers, Union and State Ministers, some of whom rant publicly against minority-run institutions, were and are among the most clamorous in the queue to get their children, grand children and great grand children admitted into such institutions. Privately, at least, some admit that the hall-marks of most Government-run educational institutions are indiscipline, intrigue, caste politics, nepotism and, not least, corruption. Hardly a day goes by without some Minister, M.P., or high dignitary seeking my assistance to get a child or grand child into a Frank Anthony School, in different parts of the country, or into a minority-run institution. I am glad to say that several of the grand children of our present Rashtrapati have been educated at the Frank Anthony School—Delhi.

12. I give only a few examples of proved lack of standards and corruption in Government or quasi-Government institutions.

The Enquiry Commission on the Bihar University found that casteism, factionalism and violence were the order of the day. Similar reports were made with regard to the Benaras and Lucknow Universities. All the five Universities in Bihar were recently taken over because they had ceased to be centres of learning. In many Government institutions students insist on the right to cheat. Teachers and professors in many Government institutions are least concerned with education: they are more concerned with caste politics and playing the role of courtiers to the ruling politicians and Education officials.

In fact, the minority run institutions are, today, among the few really national institutions in the sense that they transcend the growing barriers of regionalism and linguism. Because they seek to maintain uniform and uniformly high standards they are the only institutions to which tens of thousands of parents, liable to transfer from one part of the country to another, can and do look for the continuity of the education of their children.

Whole approach wrong

14. I regret to say that politicians, increasingly, because of pressure from teachers who form a sizeable and vocal voting block, overlook the

need for a balance in promoting sound education. No one will deny the concept of security for teachers. In every decently run private institution there is a contract of service spelling out the conditions of service—in many cases, more attractive than in Government or quasi-Government institutions. Attempts by private institutions to dismiss, reduce in rank or remove teachers, without complying with the principles of natural justice are, today, immediately struck down by the courts: no institution which values its reputation would behave in this manner. Thus in the institution in Delhi, named after me, since the starting of the School in 1959 there have been only two cases of dismissal and one of removal after full enquiry: they were cases of grave misconduct. Regrettably some politicians give ear to this type of teacher without bothering to ascertain his credentials. When a minority-run institution takes action against a member of the majority community, immediately the Hindu politicians raise a cry of communalism. As it happened in the three cases, referred to above, in which disciplinary action was taken over a period of 13 years, all the 3 were Anglo-Indians, although in the staff of about 80 teachers about 40 per cent are non-Anglo-Indians with a high percentage of Hindus.

15. Today the good, the conscientious teachers are extremely difficult to come by: privately-run schools hug such teachers to their bosom. It is only the shiftless, unmotivated, the undisciplined teachers who may face termination of their services in terms of their contract. In the name of security for teachers this Bill precipitates an imbalance in the scale of educational values. What are the conditions prevailing in many Government and quasi-Government schools where there is so-called security? Security has not enhanced the standards of education in these institutions. Security has become a cloak for the shiftless, lazy and undisciplined, even corrupt teachers: this type of teacher becomes usually a political agitator, who because of the political patronage he attracts, is virtually irremovable. Most Politicians in their desire to placate such teachers do a great disservice by making secure incompetent, shiftless and undisciplined teachers who are a menace to good education. Mentally frustrated and neglected pupils are driven to indiscipline, cheating and other manifestations which are, today, epidemic in Government and quasi-Government educational institutions.

16. Some time ago, I had a long discussion with the Headmaster of one of the large Government Higher Secondary Schools in Delhi. He informed me that the teachers' scales were extremely good but regretted that there was no discipline or standards worth the name in his institution. I asked the reason. He said that the teachers were so protected, they had so much access to the officials of the Directorate of Education and the Ministry of Education, that he dare not take disciplinary action. Private tuition had become a racket and the teachers were more concerned with adding to their already appreciable salaries, than teaching. In the face of political interference and the political patronage that so many of the teachers enjoyed, he dare not take any action, otherwise his own job as Head would immediately be in jeopardy.

Fraud on the Minorities

17. The whole approach of the Bill has been vitiated because of no real attempt to respect the content of Article 30 and the clear decisions of the Supreme Court. In fact, I regret to say that every phraseological

device has been used to get around and stultify the decisions of the Supreme Court on the right of the minorities under Article 30. The Bill in fact is symptomatic of the arrogant posture that the Legislatures, Governments and politicians are above the rule of law. The Bill, in fact, has treated the teachers as if they have a fundamental right and not the minorities. The Supreme Court has underlined that, unlike Article 19, the fundamental freedom under clause 1 of Article 30 is absolute in terms, it is not subject to any reasonable restriction of the nature of the fundamental freedoms as in Article 19: the right is an absolute right and any law or executive instructions which seeks to infringe the substance of that right would be void.

This does not mean that the right to manage means the right to mismanage and that the State cannot prescribe reasonable regulations. In the Kerala Education Bill case (1958) the Supreme Court observed: "It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institution to be aided".

Regulations referring to health, sanitation, morality, public order, can always be made. But it is only in return for aid that the State can assume such powers as to prescribe salaries, financial amenities and methods of recruitment. It can never take over any Educational institution, even temporarily, whether belonging to a minority or the Hindu majority, at least not while we have the constitution and an independent judiciary.

18. Regrettably the whole scheme and intendment of the Bill are based on the assumption that all the private managements are criminals or potential criminals. Inevitably, there are black sheep among private managements, though relatively fewer than among the Government Educational institutions. In the case of a private management found guilty of management there is always room for deterrent action; it can be derecognised, or where aided both aid and recognition can be withdrawn.

19. The Bill while paying lip service, in one or two clauses in the beginning, to the rights of the minorities under Article 30 has proceeded to spell out provisions which make a mockery of the content of Article 30 of the Constitution.

20. My amendment to exempt unaided minorities from Chapter IV was, at first, rejected: it was only later that it was agreed to grant such exemption and to bring a separate Chapter-now Chapter V.

21. This Chapter V, I regret to say, is a palpable fraud on the fundamental rights of unaided minority institutions. While this chapter purports to exempt these unaided institutions from Chapter IV, provisions have been put in which take away the choice of administration in most important aspects.

22. The most flagrantly illegal provision is with regard to arbitration cl. 15(3)(e). At one stroke this clause takes away not only discipline but a whole series of important items of administration and remits them

to a stranger to the management in the guise of an umpire or arbitrator and in any case to the courts under the provisions of the Arbitration Act.

Unaided Minority institutions will be preoccupied not with teaching or maintaining standards but in the arbitration of alleged disputes, the provision being exploited by bad, the incompetent, the politician teacher. By attempting to compel unaided minority schools to include arbitration in their contracts, the Government is, in fact, seeking to dragoon such schools into abandoning their choice of administration, under Article 30, to strangers to the minority management.

23. The cynically arbitrary and illegal character of this provision for arbitration is underlined by the fact that Government has not cared to give a semblance of similar rights to its own employees. The only right a Government employee has is under Article 311 of the Constitution: under Article 311 he must be given a reasonable opportunity to defend himself where it is proposed to punish him with dismissal, removal or reduction. If a Government servant has been given a reasonable opportunity, the courts do not sit in judgement, usually, on the degree of punishment. With regard to any other matter, a Government servant has to go to the ordinary law court: he is certainly not protected by any arbitration clause on the series of items now remitted to arbitration in the case of employees in unaided minority schools.

The illegal character of this arbitration provision is highlighted, further, by the position of employees in Public Sector Undertakings. Most of these Undertakings are statutory bodies financed entirely by Government. Yet the lakhs of employees in these Public Sector Undertakings have no security of service whatsoever: their terms are contractual. There is a catena of decisions by the Supreme Court that in case of termination simpliciter they have no remedy. In the Indian Airlines case (1971 SC 1928) the Supreme Court has held that even if a Public Sector employee is illegally dismissed, in violation of a statutory provision, he cannot claim to be reinstated: he can only go to the appropriate Court to ask for damages for such wrongful dismissal.

OTHER PROVISIONS UNCONSTITUTIONAL

24. There are a series of other provisions in Chapter V that are *ex-facie* bad as being repugnant to Article 30. The Administration has been given power to make rules in respect of the "method of recruitment" of employees by the unaided minority institutions (Cl 13). This provision has been put in despite the fact that I pointed out that clause 11 in the Kerala Education Bill which sought to prescribe a method of recruitment was held to be bad *vis-a-vis* unaided Anglo-Indian schools.

In the D.A.V. College, Jullundur case (1971) it was held that although such college was heavily aided the appointment of the staff could not be made subject to the approval of the Vice-Chancellor.

'Method of recruitment' is, par excellence, part of the choice of administration by a minority: a minority management has the right; for instance, to recruit from its members if they have the necessary qualifications, to recruit directly, to recruit on an All-India basis etc. By taking this power, an authority hostile to a minority, either because of its language or religion, will ensure that the minorities can never employ recruits of their choice suitable to the character of their institution and to serve their needs.

25. The provision that a Code of Conduct (Cl. 14) will be prescribed by an outside authority is also *ex-facie* bad. There can never be an exhaustive catalogue of all the contingencies under which disciplinary action may be taken. Thus in Central Service Classification and Control Rules the only provision (and usual in all disciplinary codes) is that the penalties such as dismissal, removal, reduction in rank may be imposed for "good and sufficient reasons". Such a power cannot be taken away from a minority management by imposing on it a so-called "Code of Conduct": *ex-facie,* the prescription of a code of conduct by the minority management is part of its choice and cannot be interfered with by an outside authority. If in exercising these powers there is *mala fides* or violation of the principle of natural justice the courts are there to strike down such acts.

26. The provision that the contracts shall provide certain conditions such as pension and gratuity Cl. 15 (3) (b) is also *ex-facie* bad. Clause 12(2) in the Kerala Education Bill that sought to prescribe the condition of service relating to pension provident fund insurance etc. in unaided Anglo-Indian schools was held to be bad: it was held to be bad not because it sought to prescribe the same conditions as in Government schools, but because, in respect of unaided minority schools, the Government cannot impose financial burdens according to Government's conceptions. It is part of the choice of an un-aided institution to decide what scales of pay and other financial benefits it may give in accordance with its capacity, its purpose and the needs it serves.

Some of the best run unaided minority schools do not give pension or gratuity but they do give higher scales, higher increments, higher provident fund than those given by Government schools. For instance, the Anglo-Indian staff prefer higher scales, higher increments, higher provident fund contributions: they are usually not interested in pensions or gratuities which are payable after long service, Anglo-Indian staff tend to be mobile. They are in considerable demand in Anglo-Indian schools through the Country: indeed they are welcome abroad where they immediately earn many times the emoluments they can get in India.

Above all, the Government can never enforce such financial commitments such as payment of pension and gratuity which would compel the poorer minority schools and orphanages to close down.

27. Clause 18 (2) is also bad. It is axiomatic that if monies are received for a specific purpose, such as a particular building in a school or a swimming pool (personally I am not in agreement with collecting donations from parents because it often leads to abuses) they shall be used for that purpose. Any misdirection of such funds in breach of the purpose for which they have been given will amount to an offence.

28. Clause 18(3) and (4) are also bad. In framing these provisions no cognisance has been taken of the fact that very often a school has no property of its own, either movable or immovable: the school is a part of the minority Education Trust or Society which may be of an All-India character. Such an Education Trust or Society may have been started with difficulty, by collecting funds from different parts of the country from the minority in question: it is only then that a school may have been established with the money of the minority: such a school may have run at a loss for several years and the Trust or Society has to find monies to

meet this loss. If and when a margin is ever achieved from the fees from such a school, it is the property of the Trust or Society, not of the school, and no outside authority can tell a minority Education Trust or Society, which is again an institution of its choice protected by Article 30, that the funds of the Trust or Society shall not be used for the educational objects of the Trust or Society.

Even in cases where the school owns the school property, whatever margin may accrue from fees, if such margin is used for educational objects such as helping poor scholars of the minority community or indeed also of the majority or any other educational purpose which the minority considers appropriate to its own needs, such use cannot be interfered with.

29. 28(2) (w) is also bad: where a minority Trust or Society owns and administers a school it may have its own manner of accounting, approved of by its auditors, and no outside authority can tell it what manner of accounting it should have.

Further, a minority Education Trust or Society, that owns a school, can certainly not be told how to operate its funds, which are not the funds of the school. So far as specific funds given to a school for a specific purpose are concerned, the Education Trust or Society will, under the ordinary law, be obliged to set these apart, to be used for the specific purposes for which collected.

30. The framers of the Bill have not tried to understand the content of Article 30 when seeking to take power to control the contract of service in unaided Minority schools. The minority-run schools have the right to employ their teachers under contract: this is part of their choice under Article 30. No teacher is compelled to join these schools. The fact is that applications from non-Anglo-Indian teachers come not by the hundred but by the thousand. I speak from personal knowledge as the Chairman of the Council for the Indian School Certificate Examinations and the Chairman of the Inter-State Board for Anglo-Indian Education, in which capacities I deal with over 600 schools throughout the Country. No outside authority can take away the choice of prescribing the conditions of contractual service from the minority managements of unaided schools. *Ex-facie* a contract is bilateral: the teachers are always at liberty to leave, in terms of their contract, and often they do, at a time, which causes great inconvenience to the management. No Government can give the school management any security in regard to preventing teacher from leaving service, in terms of their contract.

Unconstitutional Provisions regarding Aided Minority Schools

31. Even the provisions regarding unaided Minority schools in Chapter IV are bad as being repugnant to Article 30. The provision Cl. 8(2) & (3) making dismissal, removal or reduction in rank subject to the approval of Director is *ex-facie* bad. Thus, in the Kerala University Act case (1970) the provisions making the exercise of disciplinary power by the managements of aided minority colleges subject to the approval of the Vice-Chancellor was declared to be bad. On a parity of reasoning the provisions in Cl. 8(4) & (5) that purport to control suspension are bad.

Unconstitutional Provisions regarding Hindu Education Trusts and Schools

32. The provisions in Chapter IV are also bad with regard to Hindu Education Trusts and Schools. Although Hindus, where they are in a majority, do not have the fundamental right under Article 30 granted to the minorities they have the rights under Article 19(1) (f) and (g): these provisions give them the right to practise a profession and carry on an occupation, such as teaching, and to acquire, hold and dispose of property, subject to reasonable restrictions. In Chapter IV, power is sought to be taken to compel Hindu Trusts or Schools even though they are not getting any aid to pay teachers what is being paid to teachers by the appropriate authority, for example the Delhi Administration.

33. The basic failure in this approach is to understand that the Supreme Court has pointed out, for instance, in the Kerala Education Bill case (1958) that it is only in return for aid that certain powers can be taken, such as, prescribing scales of pay and other financial benefits; prescribing the method of recruitment.

34. Clause 20 (Chapter VII) is also *ex-facie* bad. This clause assumes power to take over managements of recognised schools: because of the Supreme Court decisions, minority institutions, aided or unaided, cannot be taken over. This does not mean that the Supreme Court has, by implication, approved the power to take over recognised Hindu schools. On the other hand, in the Kerala University Act case (1970) the Supreme Court held that section 63 was bad not only with regard to the minorities but with regard to aided majority-run colleges (the Nair run College) as it offended Article 19(1) (f) of the Constitution. When no Administration can take over aided Hindu colleges, a *fortiori* unaided Hindu run schools cannot be taken over.

35. Clause 2(v) read with clause 20 unfortunately shows the exproprietory motive of this bill. Clause 2(v) defines school property as meaning all movable and immovable property belonging to or in the possession of the school and all other rights and interests in arising out such property, and includes land, building and its appurtenances, playgrounds, hostels, furniture, books, apparatus, maps, equipment, utensils, cash reserve funds, investments and bank balances. Clause 20 gives the power to take over managements of all schools recognised or unrecognised, other than minority schools which are exempt under clause 21.

Clause 2(v) is *ex-facie* bad. It purports to insert in every school property which may not belong in any way to the school but it is merely in the possession of the school. As I pointed out, there are certain Education Trusts or Societies which have founded schools in different parts of the country: all property, movable and immovable of the schools vest in the Education Trust or Society: the schools have no proprietary interests.

Apparently the purpose of 2(v) is that when power to take over is exercised under clause 20 then even where the property does not in fact belong to the school the Administrator may take over all such property and divest the Trusts and Societies of such property. This exercise in expropriation is limited to Hindu Education Trusts and Societies because

minority institutions have been exempted in terms of the several decisions of the Supreme Court.

36. Another extraordinary feature of clause 20 is that it purports to give the Administrator power to expropriate, even though temporarily, schools that are not recognised. To say the least, this power is yet another exercise in lawlessness: the Administration gives no aid, the school is not even recognised, yet power is taken to expropriate the property and take over the management up to a period of 5 years.

Clause 2(u) defines a school as including any institution that imparts education or training below the degree level but does not include an institution which imparts technical training. This means, for example, that any Hindu institution, which may be preparing children for courses in music or art, and does not want either aid or recognition, can be expropriated under the euphemism of 'taking over'.

37. The arbitrary, unconstitutional powers Government is seeking to assume are highlighted by the fact that as provided in clause 4(5) there is no right in any recognised school to receive aid, while no school can be forced to take aid, certainly not a minority school because it is a part of its choice not to take aid, a school may of its own accord wish to take aid. But Government has given itself power to say where and when it will give aid: although a school is recognised and may genuinely require Government aid, it has no right to receive aid. Yet, Government is seeking to dictate to unaided privately run Hindu Trusts and Schools that they shall pay Government scales which they may not be in a position to do, especially in the case of their poor schools or orphanages.

38. From one point of view the whole approach in the Bill is also against Public policy. The Administration may be able to luxuriate in the Union territory of Delhi because the Central Government coffers are available and these can always be filled by printing more notes or by taxing further the already overtaxed middle and lower middle classes. Government tends to act in an uncoordinated, unplanned way because of pressure from a particular section. Thus by declaring bonus as deferred wages and giving it, ad hoc, to certain categories of workers it has put itself in a position where it will not be able to deny a similar demand by the Central Government employees because, as they rightly say, they have the same right to deferred wages which Government has made available to other categories.

By giving teachers in Delhi scales of pay twice or three times higher than those being paid by State Governments, the Central Government has made certain that there will be strikes by teachers throughout the country who will, understandably, demand parity of scales with teachers in the Union Territory. I wonder whether the Central Government has cared to consult the Chief Ministers in fixing the scales of the teachers in the Union Territory.

39. In another way, the insistence that Hindu Trusts and orphanages, although unaided, pay the Government scales, is against public policy. Personally, I do not think it would stand up to challenge in the courts: but if it does and the Hindu Trusts and Schools are compelled to pay Government scales, it would only mean that the better placed schools will have to increase their fees and pass the burden on to the parents but the

poor Hindu schools and orphanages would have to close down: the latter cannot be done in law because it means not restricting but extinguishing the fundamental right of the Hindu majority schools under Article 19(1) (f) and (g).

An unthinking politician may say that private schools that cannot afford to pay Government scales should close down. Apart from such a person not understanding the constitutional position, there is the failure to realise that in the context of galloping unemployment, including teachers, Government will be throwing out the Government baby (the teacher) with the bathwater. Compelling Hindu Schools and Trusts to close down (which I do not think is permissible because of Article 19) will do a disservice not only to the less fortunate pupils to whom they cater, but also to the teachers who will be thrown out of employment.

40. There are several other provisions in the Bill which, in my opinion, offend the Constitution. I refer to only some that are violative of Article 14 which guarantees equality before the law.

Thus, in my view Cl. 2(e) and Cl (4), which have to be read together are bad. Cl 2(e) defines the "appropriate authority" and accepts a multiplicity of recognising authorities. Everyone knows that these authorities have widely differing standards in the matter of Education.

Cl. 4 purports to give some value guide-lines and conditions for recognition, but the disparity, in practice, is a matter of common knowledge. Anyone who looks at some of the local authority schools must realise that they are an insult to the term education and often little more than glorified cattle-sheds. Yet these are recognised. All that will happen will be that communally-minded authorities, and they represent the rule, will try to oppress or destroy the minorities by prescribing impossible conditions for recognition that are not remotely applicable to schools run by the several "appropriate" authorities.

41. Education today, throughout the Country, has become a shambles because in Government, quasi-Government and local authority institutions there is very little of discipline, educational standards or integrity. The crying need in the Country is for these institutions, that comprise the over-whelming majority of schools, to be brought to heel. The Government must first pull the beam of indiscipline, inefficiency and corruption out of the eye of its own institutions and institutions run by local authorities than, on the pretext regulating privately managed and minority institutions, to pull the mote out of their eye.

I am bound to say, with regret, that this Bill was apparently conceived in a mood of vandalism: whatever the protestations to the contrary in the name of regulation, of security for teachers, schools which are, today, in the vanguard of Indian Education, will be reduced to the level of the shambles that passes for education in most Government and quasi-Government schools and institutions.

42. The Bill is, I believe, intended as a model for similar legislation in the States. May I say, in sorrow, that it is the negation of any kind of model: it is an exercise in lawlessness. For the minorities it is a fraud

on their fundamental rights under Article 30. For the private managements that run, without qualification, the best schools in the country, it is a calculated affront by seeking to all of them as criminals or potential criminals.

NEW DELHI; FRANK ANTHONY.
December 16, 1972.

V

All is certainly not well with the schools in Delhi. But the Bill as it stands does not even attempt to provide for "better organisation and development of educational institutions" (as claimed in the objects) except in so far as security of service of teachers will lead to it. "Better running" seems to have been considered synonymous with more bureaucratic control. Experience does not support such a belief. Nor is there any indication of how the Bill is going to guard against a "narrow sectarian outlook" whatever that may mean by treating "minority schools" as above reproach. It is an anomaly that a school remains a "minority" school (and can never be taken over) simply because it is "established and administered by a minority" although ninety per cent of the children and a large majority of the teachers do not belong to that community. It is nothing short of an incitement to people to separate themselves from the mainstream and set up as minorities. Do we hope to check sectarian outlook in this way?

The Bill is unfair to a number of managements which have done creditable pioneering work in the field of education by treating all of them as suspect. The impression one gains is that such trust and other bodies are no longer welcome in the field of education. Would it be desirable to governmentalise all education?

No doubt malpractices should be checked but at the same time good managements deserve to be strengthened rather than frightened away.

Real serious thought needs to be given to ways and means to improve the quality of education. For this the teacher needs dignity no less than security of service. Equally, the system should have an in-built provision for promptly rewarding real honest work as well as penalising negligence and indiscipline.

More specifically I wish to make the following observations regarding the various provisions of the Bill:—

CHAPTER II

(3) Time allowed for appeal against refusal for recognition should be sixty days instead of thirty. There should be provision for appeal against the decision of the prescribed authority.

(5) Recognition should entitle every school to receive aid, if it applies for it. Failing this, insistence on statutory provision clause 10(1) will only mean putting the managements struggling to run schools despite paucity of funds in difficulty and will eventually lead to a situation where such schools either close down or have to be taken over by the administration. If private philanthropic interest in running schools is not to be totally cut out, this situation should not be allowed to arise.

(7) The six months period allowed to the prescribed authority for disposing off appeals against withdrawal of recognition is too long. Such long suspense is sure to kill an institution. Why should the authority need more than say, sixty days?

CHAPTER III

(3) The Administrator's decision should be appealable.

CHAPTER IV

(4) Where it takes months and sometimes years for important matters to be attended to, automatic abrogation of suspension if not approved by the Director within fifteen days would mean delay and inefficiency in the Directorate going to the protection of gross misconduct on the part of employees.

CHAPTER VII

(20) More thought seems necessary to the question whether any managing committee would be in a position to run a school when it is restored to it after being run by the Administrator for a period up to five years. Many managements consider that the period should be much smaller. If things do not improve in say six months or a year, there is no use continuing the arrangement; the school should be permanently taken over.

CHAPTER VIII

(23) & (25) The Administrator should not have the authority to delegate his power in the matter of deciding disputes.

In view of the obvious chance of the Director wielding all the authority being conferred on the Administrator by this act, it is necessary that his decisions should be appealable.

Financial Memorandum

(3) The maximum of Rs. 3600 per annum by way of rent grant is patently inadequate for running a school today.

(4) & (5) Same applies to the maximum of Depreciation grants for school buildings and hostel buildings.

A maximum limit of Rs. 1 lakh on building grant is ridiculous in view of the present cost structure.

NEW DELHI; BHAI MAHAVIR.

December 16, 1972.

VI

Members of the Joint Committee on Delhi School Education Bill made every effort for quick adoption of the Bill by the Committee for which they had to sit for a few days upto 11 at night after Parliament Business hours. Although this is an example of unusual earnestness on the part of the Members of the Committee to expeditiously deal with the pressing problems facing the teaching community of Delhi, yet such hurried attempt to go into the issues of the teaching community may not have entirely succeeded in achieving the objectives as was desired by the Committee.

2. Success regarding the implementation of the provisions of the Bill, when it will be enacted will depend very largely on speedy as well as judicious framing of the rules as provided in the Bill. After early formulation of the Rules, a discussion as to their suitability should be held with the Members of the Committee and the others interested in the matter. Views of the teaching community should also be given due consideration in framing the rules.

3 . The Bill is mainly concerned to the problems of management of the primary, middle school and higher secondary schools. The Bill should have taken into consideration the problems of management of other type of associate educational institutions like coaching schools and tutorial schools. It is necessary that some suitable measures should also be undertaken to control and regularise the management of such associate educational institutions.

4. The word 'manager' in regard to one of the principal functionaries of the management is not suitable to the dignity and objective of educational institution. The management of an educational institution should not be equated with the management of factories or similar industrial or business or professional bodies. It would have been better if the word 'manager' should have been replaced by another suitable equivalent, like 'Probandhak' or 'Parichalak'.

5. In the Managing Committee, representation from the teaching community should be incorporated for which the rule to be framed should be specific.

6. In defining the power and authority of the administrator, care should be taken in the rules to be formulated that such an authority is not given the opportunity to become a dictatorial personality in controlling the affairs of the management of an educational institution.

7. In framing the rules regarding constitution of managing committee by the administrator, care should be taken to avoid representation from political parties so as to avoid partisan influence in running an educational institution.

8. Rights of the minorities in running educational institutions have been given excessive importance. Rights of the minorities in regard to cultural, linguistic and religious values should undoubtedly be protected, but in the name of minorities rights the educational problems as also the management of educational institution cannot be made subject of separate principles, rules and procedures. The Parliament should review the whole issue of the rights of the minorities in regard to the problem of management of educational institutions. Except regarding the issues of certain specific values related to the minorities, the principle, the system and the objective of education cannot be divided into two separate patterns of minority education and majority education.

9. This Bill deals only with the matters concerned to the affairs of management of educational institutions but not with the fundamental problems of education like the syllabi, the courses, the teaching and examination system. It would have been better if a Model Bill comprising the problems of management as well as system of education of schools

of various categories could have been formulated. Delhi being the metropolitan city of the country, the Bill could provide a model pattern for changes in the system and institution of school education in our country which is already over due.

NEW DELHI; SAMAR GUHA.

16*th December*, 1972.

VII

I agree that the Joint Committee have improved the original Bill in certain respects; but the special provisions made for the unaided minority schools will detract from achieving the purposes of the legislation *viz.*— "better organisation and development of school education in the Union territory of Delhi....".

2. The call of the time is such that it requires a legislation "to provide for better organisation and development of school education" whether it concerns the minorities or majorities.

3. I have no objection to the minority's right to manage and administer their educational institutions. It is their right granted and guaranteed by the Constitution. It ought to be upheld and respected. What, however, I object to is the exclusion of these schools from the general provisions of the Bill as if the problems sought to be solved through this legislation do not exist in schools run by minorities. The employees and students of minority schools and also the minority community ought not to be deprived of the benefits which their counterparts of other schools would derive under the Bill. "Better organisation and development of school education" is a desideratum for the "minority schools" as well.

4. Education in Delhi has become a commercial proposition, the private schools which are recognised charge heavy fees from students in various forms but do not pay adequate salary to teachers and in order to escape from regulatory provision of the Education Code, do not seek any aid. The Bill unfortunately does not take any step to rectify this profiteering tendency. The result is exploitation of students, parents and teachers. This must be put an end to by regulating the fees of private recognised schools and not merely aided schools.

5. I hope the House will take into consideration the points raised above while the Bill is enacted into law.

NEW DELHI; E. V. VIKHE PATIL.

16*th December*, 1972.

BILL No. 91-B OF 1972

THE DELHI SCHOOL EDUCATION BILL, 1972

(AS REPORTED BY THE JOINT COMMITTEE)

[*Words side-lined or under-lined indicate the amendments suggested by the Committee; asterisks indicate omissions.*]

A

A Bill to provide for better organisation and development of school education in the Union territory of Delhi and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Delhi School Education Act, 1972.

(*2*) It extends to the whole of the Union territory of Delhi.

(*3*) It shall come into force on such date as the Administrator may, by notification, appoint and different dates may be appointed for different provisions of the Act, and any reference to the commencement of this Act in relation to any provision thereof shall be construed as a reference to the date on which that provision comes into force.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "Administrator" means the Administrator of the Union territory of Delhi appointed by the President under article 239 of the Constitution;

(*b*) "Advisory Board" means the Board referred to in section 22;

(*c*) "aid" means any aid granted to a recognised school by the Central Government, Administrator, a local authority or any other authority designated by the Central Government, Administrator or a local authority;

(*d*) "aided school" means a recognised private school which is receiving aid in the form of maintenance grant from the Central Government, Administrator or a local authority or any other authority designated by the Central Government, Administrator or a local authority;

(*e*) "appropriate authority" means,—

(*i*) in the case of a school recognised or to be recognised by an authority designated or sponsored by the Central Government, that authority;

(*ii*) in the case of a school recognised or to be recognised by the Delhi Administration, the Administrator or any other officer authorised by him in this behalf;

(*iii*) in the case of a school recognised or to be recognised by the Municipal Corporation of Delhi, that Corporation;

* * * * *

(*iv*) in the case of any other school, the Administrator or any other officer authorised by him in this behalf;

(*f*) "Delhi" means the Union territory of Delhi;

(*g*) "Director" means the Director of Education, Delhi, and includes any other officer authorised by him to perform all or any of the functions of the Director under this Act;

(*h*) "employee" means a teacher and includes every other employee working in a recognised school;

(*i*) "existing employee" means an employee of an existing school who is employed in such school immediately before the commencement of this Act, and includes an employee who was employed in such school for a period of not less than twelve months immediately preceding the 2nd day of September, 1972;

(j) "existing school" means a recognised private school which is in existence at the commencement of this Act;

(*k*) "Head of School" means the principal academic officer, by whatever name called, of a recognised school;

(l) "local authority" means,—

(*i*) in relation to an area within the local limits of the Municipal Corporation of Delhi, that Corporation;

(*ii*) in relation to an area within the local limits of the New Delhi Municipal Committee, that Committee;

(*iii*) in relation to an area within the local limits of the Delhi Cantonment Board, that Board;

(*m*) "manager", in relation to a school, means the person, by whatever name called, who is entrusted, either on the date on which this Act comes into force or, as the case may be, under a scheme of management made under section 5, with the management of the affairs of that school;

(*n*) "managing committee" means the body of individuals who are entrusted with the management of any recognised private school;

(*o*) "minority school" means a school established and administered by a minority having the right to do so under clause (1) of article 30 of the Constitution;

(*p*) "notification" means a notification published in the Official Gazette;

(*q*) "prescribed" means prescribed by rules made under this Act;

(*r*) "private school" means a school which is not run by the Central Government, Administrator, a local authority or any other authority designated or sponsored by the Central Government, Administrator or a local authority;

(*s*) "public examination" means an examination conducted by the Central Board of Secondary Education, Council for Indian School Certificate Examinations or any other Board which may hereafter be established for the purpose, and recognised by the Administrator or any other officer authorised by him in this behalf;

(*t*) "recognised school" means a school recognised by the appropriate authority;

(*u*) "school" includes a pre-primary, primary, middle and higher secondary school, and also includes any other institution which imparts education or training below the degree level, but does not include an institution which imparts technical education;

(*v*) "school property" means all movable and immovable property belonging to, or in the possession of, the school and all other rights and interests in, or arising out of, such property, and includes land, building and its appurtenances, play grounds, hostels, furniture, books, apparatus, maps, equipment, utensils, cash reserve funds, investments and bank balances;

(*w*) "teacher" includes the Head of a school.

(*x*) "unaided minority school" means a recognised minority school which does not receive any aid.

CHAPTER II

ESTABLISHMENT RECOGNITION, MANAGEMENT OF, AND AID TO, SCHOOLS

Power of Administrator to regulate education in schools.

3. (*1*) The Administrator may regulate * * * * * * education in all the schools in Delhi in accordance with the provisions of this Act and the rules made thereunder.

(2) The Administrator may establish and maintain any school in Delhi or may permit any person or local authority to establish and maintain any school in Delhi, subject to compliance with the provisions of this Act and the rules made thereunder.

(3) On and from the commencement of this Act and subject to the provisions of clause (1) of article 30 of the Constitution, the establishment of a new school or the opening of a higher class or the closing down of an existing class in any existing school in Delhi shall be subject to the provisions of this Act and the rules made thereunder and any school or higher class established or opened otherwise than in accordance with the provisions of this Act shall not be * * * recognised by the appropriate authority.

Recognition of schools.

4. (1) The appropriate authority may, on an application made to it in the prescribed form and in the prescribed manner, recognise any private school:

Provided that no school shall be recognised unless—

(a) it has adequate funds to ensure its financial stability and regular payment of salary and allowances to its employees;

(b) it has a duly approved scheme of management as required by section 5;

(c) it has suitable or adequate accommodation and sanitary facilities having regard, among other factors, to the number, age and sex of the pupils attending it;

(d) it provides for approved courses of study and efficient instruction;

(e) it has teachers with prescribed qualifications; and

(f) it has the prescribed facilities for physical education, library service, laboratory work, workshop practice or co-curricular activities.

* * * * *

(2) Every application for recognition of a school shall be entertained and considered by the appropriate authority and the decision thereon shall be communicated to the applicant within a period of four months from the date of the receipt of the application; and where recognition is not granted, the reasons for not granting such recognition shall also be communicated to the applicant within the said period.

(3) Where recognition to a school is refused, any person aggrieved by such refusal may, within thirty days from the date of communication to him, of such refusal, appeal against such refusal, in the prescribed manner, to the prescribed authority and the decision of the prescribed authority thereon shall be final:

Provided that the prescribed authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of thirty days, extend, for reasons to be recorded by it in writing, the said period by a further period of sixty days.

(4) Where the managing committee of a school obtains recognition by fraud, misrepresentation or suppression of material particulars, or where, after obtaining recognition, the school fails to continue to comply with any of the conditions specified in the proviso to sub-section (1), the authority granting the recognition may, after giving the managing committee of the school a reasonable opportunity of showing cause against the proposed action, withdraw the recognition granted to such school under sub-section (1).

(5) The recognition granted under sub-section (1) shall not, by itself entitle any school to receive aid.

(6) Every existing school shall be deemed to have been recognised under this section and shall be subject to the provisions of this Act and the rules made thereunder:

Provided that where any such school does not satisfy any of the conditions specified in the proviso to sub-section (1), the prescribed authority may require the school to satisfy such conditions and such other conditions as may be prescribed, within a specified period and if any such condition is not satisfied, recognition may be withdrawn from such school.

(7) Every school, whose recognition is withdrawn under sub-section (4) or sub-section (6), may appeal to the prescribed authority, who shall dispose of the appeal within six months from the date of presentation of the appeal in such manner as may be prescribed, and if the appeal is not disposed of within that period, the order for the withdrawal of recognition shall, on the expiry of the said period of six months, stand cancelled.

(8) On hearing an appeal preferred under sub-section (3), sub-section (4) or sub-section (6), the prescribed authority may, after giving the appellant a reasonable opportunity of being heard, confirm, modify or reverse the order appealed against.

Scheme of management.

5. (1) Notwithstanding anything contained in any other law for the time being in force or in any instrument having effect by virtue of any such law, the managing committee of every recognised school shall make, in accordance with the rules made under this Act and with the previous approval of the appropriate authority, a scheme of management for such school:

Provided that in the case of a recognised private school which does not receive any aid, the scheme of management shall apply with such variations and modifications as may be prescribed:

Provided further that so much of this sub-section as relates to the previous approval of the appropriate authority, shall not apply to a scheme of management for an unaided minority school.

(2) A scheme may be made, in like manner, to add to, vary or modify any scheme made under sub-section (1).

Aid to recognised schools.

6. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf and subject to such conditions as may be prescribed, pay to the Administrator, for distribution of aid to recognised private schools, not being primary schools, recognised by a local authority, such sums of money as that Government may consider necessary:

Provided that no existing school receiving, immediately before the commencement of this Act, aid shall be eligible for the continuance of such aid unless it complies, within such period as may be specified by the Director, with the conditions specified in the proviso to sub-section (1) of section 4.

(2) The authority competent to grant the aid may stop, reduce or suspend aid for violation of any of the conditions prescribed in this behalf.

(3) The aid may cover such part of the expenditure of the school as may be prescribed.

(4) No payment, out of the aid given for salary, allowances and provident fund of employees of the school, shall be made for any other purpose.

(5) No aid shall be given to a school the management of which has been taken over under section 20.

(6) No unrecognised school shall be eligible to receive any aid or any benefit made available to private schools by the Administrator or any agency of the Administrator.

CHAPTER III

SCHOOL PROPERTY

School property.

7. (1) The management of every aided school shall furnish to the appropriate authority, initially, at the time of grant of aid and thereafter annually, a statement containing a list of school property together with such particulars as may be prescribed.

(2) Notwithstanding anything contained in any other law for the time being in force, no transfer, mortgage or lease of any movable or immovable property of an aided school, not being the property specified in the rules, shall be made except with the previous approval of the appropriate authority:

Provided that where the appropriate authority omits or fails to dispose of the application for such permission within sixty days from the date of receipt of the application in this behalf, the permission shall, on the expiry of the said period of sixty days, be deemed to have been granted.

(3) Any person aggrieved by the grant or refusal of permission under sub-section (2) may, prefer, in such form and within such time as may be prescribed, appeal to the Administrator against such grant or refusal of permission and the decision of the Administrator thereon shall be final.

(4) Any transaction made in contravention of the provisions of sub-section (2), or, as the case may be, decision of the Administrator, shall be void.

CHAPTER IV

TERMS AND CONDITIONS OF SERVICE OF EMPLOYEES OF RECOGNISED PRIVATE SCHOOLS

Terms and conditions of service of employees of recognised Private schools.

8. (1) The Administrator may make rules regulating the minimum qualifications for recruitment, and the conditions of service, of employees of recognised private schools:

Provided that neither the salary nor the rights in respect of leave of absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantage of such employee:

Provided further that every such employee shall be entitled to opt for terms and conditions of service as they were applicable to him immediately before the commencement of this Act.

(2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.

(3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under section 11.

(4) Where the managing committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except with the prior approval of the Director:

Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct, within the meaning of the Code of Conduct prescribed under section 9, of the employee:

Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.

(5) Where the intention to suspend, or the immediate suspension of, an employee is communicated to the Director, he may, if he is satisfied that there are adequate and reasonable grounds for such suspension, accord his approval to such suspension.

* * * * *

Employees to be governed by a Code of Conduct.

9. Every employee of a recognised school shall be governed by such Code of Conduct as may be prescribed and on the violation of any provision of such Code of Conduct, the employee shall be liable to such disciplinary action as may be prescribed.

Salaries of employees.

10. (1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees

of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.

Tribunal.

11. (1) The Administrator shall, by notification, constitute a Tribunal, to be known as the "Delhi School Tribunal", consisting of one person:

Provided that no person shall be so appointed unless he has held office as a District Judge or any equivalent judicial office.

(2) If any vacancy, other than a temporary absence, occurs in the office of the presiding officer of the Tribunal, the Administrator shall appoint another person, in accordance with the provisions of this section, to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

(3) The Administrator shall make available to the Tribunal such staff as may be necessary in the discharge of its functions under this Act.

(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.

(5) The Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it shall hold its sittings.

(6) The Tribunal shall for the purpose of disposal of an appeal preferred under this Act have the same powers as are vested in a court of appeal by the Code of Civil Procedure, 1908 and shall also have the power to stay the operation of the order appealed against on such terms as it may think fit.

5 of 1908.

Chapter not to apply to unaided minority schools.

12. Nothing contained in this Chapter shall apply to an unaided minority school.

CHAPTER V

PROVISIONS APPLICABLE TO UNAIDED MINORITY SCHOOLS

Power to prescribe minimum qualifications for recruitment.

13. The Administrator may make rules regulating the minimum qualifications for, and method of, recruitment of employees of unaided minority schools:

Provided that no qualification shall be varied to the disadvantage of an existing employee of an unaided minority school.

Power to prescribe Code of Conduct.

14. Every employee of an unaided minority school shall be governed by such Code of Conduct as may be prescribed.

Contract of service.

15. (*1*) The managing committee of every unaided minority school shall enter into a written contract of service with every employee of such school:

Provided that if, at the commencement of this Act, there is no written contract of service in relation to any existing employee of an unaided minority school, the managing committee of such school shall enter into such contract within a period of three months from such commencement:

Provided further that no contract referred to in the foregoing proviso shall vary to the disadvantage of any existing employee the term of any contract subsisting at the commencement of this Act between him and the school.

(*2*) A copy of every contract of service referred to in sub-section (*1*) shall be forwarded by the managing committee of the concerned unaided minority school to the Administrator who shall, on receipt of such copy, register it in such manner as may be prescribed.

(*3*) Every contract of service referred to in sub-section (*1*) shall provide for the following matters, namely:—

(*a*) the terms and conditions of service of the employee including the scale of pay and other allowances to which he shall be entitled;

(*b*) the leave of absence, age of retirement, pension, gratuity, provident fund, medical or other benefits to which the employee shall be entitled;

(*c*) the penalties which may be imposed on the employee for the violation of any Code of Conduct or the breach of any term of the contract entered into by him;

(*d*) the manner in which disciplinary proceedings in relation to the employee shall be conducted and the procedure which shall be followed before any employee is dismissed, removed from service or reduced in rank;

(*e*) arbitration of any dispute arising out of any breach of contract between the employee and the managing committee with regard to—

(*i*) the scales of pay and other allowances,

(*ii*) leave of absence, age of retirement, pension, gratuity, provident fund, medical and other benefits,

(*iii*) any disciplinary action leading to the dismissal or removal from service or reduction in rank of the employee;

(*f*) any other matter which, in the opinion of the managing committee, ought to be, or may be, specified in such contract.

CHAPTER VI

ADMISSION TO SCHOOLS AND FEES

Admission to recognised schools.

16. (*1*) A child who has not attained the age of five years, shall not be admitted to class I or an equivalent class or any class higher than class I in a recognised school.

(*2*) A student seeking admission for the first time in a recognised school in a class higher than class I shall not be admitted to that class if his age reduced by the number of years of normal school study between that class and class I or an equivalent class, falls short of five years.

(*3*) Admission to a recognised school or to any class thereof shall be regulated by rules made in this behalf.

Fees and other charges.

17. (*1*) No aided school shall levy any fee or collect any other charge or receive any other payment except those specified by the Director.

(*2*) Every aided school having different rates of fees or other charges or different funds shall obtain prior approval of the prescribed authority before levying such fees or collecting such charges or creating such funds.

(*3*) The manager of every recognised school shall, before the commencement of each academic session, file with the Director a full statement of the fees to be levied by such school during the ensuing academic session, and except with the prior approval of the Director, no such school shall charge, during that academic session, any fee in excess of the fee specified by its manager in the said statement.

School Fund.

18. (*1*) In every aided school, there shall be a fund, to be called the "School Fund", and there shall be credited thereto—

(*a*) any aid granted by the Administrator,

(*b*) income accruing to the school by way of fees, charges or other payments, and

(*c*) any other contributions, endowments and the like.

(*2*) The School Fund and all other funds, including the Pupils' Fund, established with the approval of the Administrator, shall be accounted for and operated in accordance with the rules made under this Act.

(*3*) In every recognised unaided school, there shall be a fund, to be called the "Recognised Unaided School Fund", and there shall be credited thereto income accruing to the school by way of—

(*a*) fees.

(*b*) any charges and payments which may be realised by the school for other specific purposes, and

(*c*) any other contributions, endowments, gifts and the like.

(4) (a) Income derived by unaided schools by way of fees shall be utilised only for such educational purposes as may be prescribed; and

(b) charges and payments realised and all other contributions, endowments and gifts received by the school shall be utilised only for the specific purpose for which they were realised or received.

(5) The managing committee of every recognised private school shall file every year with the Director such duly audited finanical and other returns as may be prescribed, and every such return shall be audited by such authority as may be prescribed.

Affiliations.

19. (1) For the purpose of any public examination every recognised higher secondary school shall be affiliated to one or more of the Boards or Council conducting such examination and shall fulfil the conditions specified by the Board or Council in this behalf.

(2) The students of recognised higher secondary school shall be prepared for, and presented to, the public examinations or such other form of evaluation held or made for the students of such schools.

(3) The students of every recognised middle school shall be prepared for, and presented to, such public examination as may be held by the Directorate of Education Delhi, for the students of such schools.

(4) Every student of a recognised primary school shall be prepared for, and presented to, such public examination as may be held by the competent to hold such examination for the students of such schools.

CHAPTER VII

TAKING OVER THE MANAGEMENT OF SCHOOLS

Taking over the management of schools.

20. (1) Whenever the Administrator is satisfied that the managing committee or manager of any school, whether recognised or not, has neglected to perform any of the duties imposed on it by or under this Act or any rule made thereunder and that it is expedient in the interests of school education to take over the management of such school, he may, after giving the managing committee or the manager of such school, a reasonable opportunity of showing cause against the proposed action, take over the management of such school for a limited period not exceeding three years:

Provided that where the management of a school has been taken over for a period of three years or less, the Administrator may, if he is of opinion that in order to secure proper management of the school it is expedient that such management should continue to be in force after the expiry of the said limited period, he may, from time to time, issue directions for the continuance of such management for such period not exceeding one year at a time as he may think fit, so, however, that the total period for which such management is taken over shall not, in any case, exceed five years.

(2) Whenever the management of any school is taken over under sub-section (1), every person in charge of the management of such school immediately before its management is taken over, shall deliver possession of the school property to the Administrator or any officer authorised by him in this behalf.

(3) After taking over the management of any school under this section, the Administrator may arrange to manage the school through

the Director or any other person authorised by the Director in this behalf (hereinafter referred to as the "authorised officer").

(4) Where the management of any school has been taken over under sub-section (1), the managing committee or manager of such school may, within three months from the date of taking over, appeal to the Administrator, who may after considering the representation made by the managing committee or the manager, pass such orders including an order for the restoration of the management or for the reduction of the period during which the management of such school shall remain vested in the Administrator, as he may deem fit.

(5) Where the management of a school has been taken over under this section, the Administrator shall pay such rent as may be payable for the building of the school to the person entitled to receive it as was being paid by the managing committee or the manager immediately before the management of such school was taken over.

(6) During such period as any school remains under the management of the authorised officer—

(a) the service conditions as approved by the Administrator, of the employees of the school who were in employment immediately before the date on which the management was taken over, shall not be varied to their disadvantage;

(b) all educational facilities which the school had been affording immediately before such management was taken over, shall continue to be afforded;

(c) the School Fund, the Pupils' Fund and the Management Fund and any other existing fund shall continue to be available to the authorised officer for being spent for the purposes of the school; and

(d) no resolution passed at any meeting of the managing committee of such school shall be given effect to unless approved by the Administrator.

21. Nothing contained in section 20 shall apply to any minority school. Section 20 not to apply to minority schools.

CHAPTER VIII

MISCELLANEOUS

22. (1) **There shall be * * * an Advisory Board for school education, to be called the "Delhi School Education Advisory Board" for the purpose of advising the Administrator on matters of policy relating to education in Delhi.** Delhi Schools Education Advisory Board.

(2) The Advisory Board shall be Constituted by the Administrator and shall consist of a Chairman and fourteen other members, to be nominated by the Administrator.

(3) The Advisory Board constituted under sub-section (2) shall include—

(a) Head of recognised private schools;

(b) representatives of the organisations of teachers of the recognised private schools;

(c) managers of the recognised private schools;

(d) representative of parents or guardians of students of recognised private schools; and

(e) eminent educationists.

(4) The Advisory Board shall regulate its own procedure.

(5) The terms of office of every member of the Board and travelling and other allowances payable to a member of the Board shall be such as may be prescribed.

Delegation of powers.

23. (1) The Administrator may delegate all or any of his powers, duties and functions under this Act to the Director or any other officer.

(2) Every person to whom any power is delegated under sub-section (1), may exercise that power in the same manner and with the same effect as if such power had been conferred on him directly by this Act and not by way of delegation.

Inspection of schools.

24. (1) Every recognised school shall be inspected at least once in each financial year in such manner as may be prescribed.

(2) The Director may also arrange special inspection of any school on such aspects of its working as may, from time to time, be considered necessary by him.

(3) The Director may give directions to the manager requiring the manager to rectify any defect or deficiency found at the time of inspection or otherwise in the working of the school.

(4) If the manager fails to comply with any direction given under sub-section (3), the Director may, after considering the explanation or report, if any, given or made by the manager, take such action as he may think fit, including—

(a) stoppage of aid,

(b) withdrawal of recognition, or

(c) except in the case of a minority school, taking over of the school under section 20.

Jurisdiction of civil courts barred.

25. No civil court shall have jurisdiction in respect of any matter in relation to which the Administrator or the Director or any other person authorised by the Administrator or Director or any other officer or authority appointed or specified by or under this Act, is empowered by or under this Act to exercise any power, and no injunction shall be granted by any civil court in respect of anything which is done or intended to be done by or under this Act.

Protection of action taken in good faith.

26. No suit, prosecution or other legal proceeding shall lie against the Administrator, Director or any other person authorised by the Administrator or Director for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

Liability of manager to punishment.

27. If the manager of any recognised private school—

(a) omits or fails, without any reasonable excuse, to carry out any orders made by the Tribunal, or

(*b*) presents any student for any public examination without complying with the provisions of section 19,

(*c*) omits or fails to deliver any school property to the Administrator or any officer authorised by him under sub-section (*2*) of section 20,

he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Power to make rules.

28. (*1*) The Administrator may, with the previous approval of the Central Government, and subject to the condition of previous publication, by notification, make rules to carry out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the manner in which education may be regulated by the Administrator in Delhi;

(*b*) the conditions which every existing school shall be required to comply;

(*b*) the conditions which every existing school shall be required class or the closing down of an existing class in an existing school;

(*d*) the form and manner in which an application for recognition of a school shall be made;

(*e*) the facilities to be provided by a school to obtain recognition;

(*f*) the manner in which, and the authority to which, an appeal against the refusal or withdrawal of recognition shall be made;

(*g*) the minimum qualifications for, and method of recruitment, and the terms and conditions of service of employees;

(*h*) the authorities to be specified for the purposes of the different provisions of this Act;

(*i*) the particulars which a scheme of management shall contain, and the manner in which such scheme shall be made;

(*j*) variations and modifications which may be made in the scheme of management for a recognised school which does not receive any aid;

(*k*) the conditions under which aid may be granted to recognised schools, and on the violation of which aid may be stopped, reduced or suspended;

(*l*) the part of the expenditure of a recognised school which is to be covered by aid;

(*m*) particulars of school property which should be furnished to the appropriate authority;

(*n*) the form in which, and the time within which, an appeal shall be preferred to the Administrator against an order made in relation to the transfer, mortgage or lien of any school property;

(*o*) the Code of Conduct for the employees and the disciplinary action to be taken for the violation thereof;

(*p*) the benefits which should be granted to the employees of recognised private schools;

(*q*) admissions to a recognised school;

(*r*) fees and other charges which may be collected by an aided school;

(*s*) the manner of inspection of recognised schools;

(*t*) the term of office, travelling and other allowances payable to the members of the Advisory Board;

(*u*) financial and other returns to be filled by the managing committee of recognised private schools, and the authority by which such return shall be audited;

(*v*) educational purposes for which the income derived by way of fees by recognised unaided school shall be spent;

(*w*) manner of accounting and operation of school funds and other funds of a recognised private school;

(*x*) fees, not exceeding one rupee, for preferring any appeal under this Act;

(*y*) any other matter which is to be, or may be, prescribed under this Act.

(*3*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties.

29. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

S. L. SHAKDHER,
Secretary.

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